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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-881]

Malleable Cast Iron Pipe Fittings from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT or the Court) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain cast iron electrical conduit articles (electrical conduit articles) imported by Atkore Steel Components, Inc. (Atkore), are not within the scope of the antidumping duty order on malleable cast iron pipe fittings (MIPF) from the People's Republic of China (China).

DATES: Applicable August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Alex Rosen, Office III, AD/CVD

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SUPPLEMENTARY INFORMATION:

Background

On October 4, 2016, Atkore submitted a scope request claiming that electrical conduit articles are outside the scope of the antidumping duty *Order*<sup>1</sup> on MIPF from China.<sup>2</sup> Commerce

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<sup>1</sup> See *Antidumping Duty Order: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 69376 (December 12, 2003) (*Order*).

issued its Final Scope Ruling on MIPF on March 16, 2017, finding that electrical conduit articles were subject to the scope of the *Order*.<sup>3</sup> On May 12, 2017, Atkore filed a complaint with the CIT asking for a review of Commerce’s Final Scope Ruling. On May 15, 2018, the CIT remanded the scope ruling on two grounds.<sup>4</sup> First, the CIT held that Commerce’s determination was incorrect with regard to its finding that the scope language in the *Order* was unambiguous. Second, the Court held that Commerce’s substantive conclusions, responding to Atkore’s arguments about the 19 CFR 351.225(k)(1) sources, were unsupported by substantial evidence.

Pursuant to the Court’s instructions, Commerce issued the Final Results of Redetermination on Remand.<sup>5</sup> Consistent with the Court’s instructions, Commerce conducted an analysis of the (k)(1) sources at the court’s direction, but under respectful protest.<sup>6</sup> Upon further analysis of the merchandise under consideration, and based on various 351.225(k)(1) sources on the record, Commerce determined that the record supports a determination that electrical conduit articles are outside the scope of the *Order*.<sup>7</sup> On August 3, 2018, the Court sustained Commerce’s Final Remand Results in their entirety.<sup>8</sup>

#### Timken Notice

In its decision in *Timken*,<sup>9</sup> as clarified by *Diamond Sawblades*,<sup>10</sup> the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of

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<sup>2</sup> See Atkore’s Letter, “Scope Ruling Request: Malleable Cast Iron Pipe Fittings from the People’s Republic of China (A-570-881),” dated October 4, 2016 (Scope Request).

<sup>3</sup> See Memorandum, “Antidumping Duty Order on Malleable Cast Iron Pipe Fittings from the People’s Republic of China, Final Scope Ruling Concerning Cast Iron Electrical Conduit Articles,” dated March 16, 2017 (Final Scope Ruling).

<sup>4</sup> See *Atkore Steel Components, Inc. v. United States*, Court No. 17-00077, Slip Op. 18-52 (CIT 2018).

<sup>5</sup> See Final Results of Redetermination Pursuant to Court Remand, Certain Malleable Iron Pipe Fittings from the People’s Republic of China, *Atkore Steel Components, Inc. v. United States*, Court No. 17-00077, Slip Op. 18-52 (CIT May 15, 2018), dated July 11, 2018 (Final Remand Results).

<sup>6</sup> *Id.* at 2 (citing *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj*)).

<sup>7</sup> See Final Remand Results at 16.

<sup>8</sup> See *Atkore Steel Components, Inc. v. United States*, Court No. 17-00077, Slip Op. 18-94 (CIT 2018).

<sup>9</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>10</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s August 3, 2018, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce’s Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of components for MIPF pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Order* does not cover the electrical conduit articles specified in Atkore’s Scope Request. Commerce will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for certain electrical conduit articles imported by Atkore. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Atkore’s electrical conduit articles without regard to antidumping duties, and to lift suspension of liquidation of such entries.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) of the Act.

Dated: August 24, 2018.

Gary Taverman,  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance.

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